

REMARKS

Claims 17-29 remain pending in the instant application. As Applicants have previously informed Examiner Criares by phone and in responses to Office Actions of related applications, there is pending litigation involving related patent(s) in the same family as the present application.

The Examiner alleges that Claims 17-28 are unpatentable under the judicially created doctrine of obviousness-type double patenting over Claims 1-20 of U.S. Patent No. 6,432,932. The present application is a continuation of the application, USSN 09/388,659, which issued as U.S. Patent No. 6,432, 932. Without making any concession, Applicants will file a terminal disclaimer immediately upon indication that the claims are otherwise allowable in order to facilitate issuance.


The Examiner further states that "there is no apparent reason why applicant was prevented from presenting claims corresponding to those of the instant application during prosecution of the application which matured into a patent." Although not expressly stated, this language mimics that found in the MPEP for non-obviousness type, non-statutory double patenting. (See MPEP ¶8.38 on page 800-27, August 2001). The Examiner's concern will therefore be rendered moot by the submission of a terminal disclaimer as suggested above.

Applicants have also included herewith a Supplemental IDS and Form 1449. It would be greatly appreciated if the initialed Form 1449 is returned with the next Office Action. Copies of the relevant references are also included herewith, as well as a copy of the email communication of February 20, 1998, which is also listed on the 1449 form.

If a telephonic communication with the Applicants' representative will advance the prosecution of the instant application, please telephone the representative indicated below. Applicants believe no additional fees are due other than the fee for the two-month extension and the Supplemental IDS. Nonetheless, the Commissioner is authorized to charge any other fees required in connection with this response to Merck Deposit Account No. 13-2755.

Respectfully submitted,

By


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